

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MASON TENDERS DISTRICT COUNCIL :
WELFARE FUND, PENSION FUND :
ANNUITY FUND, MASON TENDERS :
TRAINING PROGRAM FUND and :
JOHN J. VIRGA, in his fiduciary capacity :
as Director, :

Plaintiffs, :

-against- :

STRAIGHT LINE CONSTRUCTION :
CONSULTANTS INC. and :
JOSEPH GHERALDI :

Defendants. :
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Hon. HAROLD BAER, JR., District Judge:

WHEREAS, Plaintiffs filed this action on December 3, 2004 seeking, *inter alia*, recovery for fringe benefit contributions due and owing to them by Defendants pursuant to a collective bargaining agreement by and between the Mason Tenders District Council of Greater New York and Defendants as of July 1, 2002 (the "CBA");

WHEREAS, pursuant to Article VI, Section 17 of the CBA, the amount due from Defendants is to be determined by an audit of the books and records of Straight Line Construction Consultants Inc. ("Straight Line");

WHEREAS, Defendants were served with the complaint in this action but did not appear, and consequently the Court entered a Judgment against Defendants on March 10, 2005 (the "Default Judgment");

WHEREAS, the Default Judgment awarded to Plaintiffs liquidated damages in the amount of \$3,537.50 and ordered Defendants to permit and cooperate in the conduct of an audit of Straight Line's books and records, including but not limited to payrolls and payroll ledgers, for the period December 23, 2002 to the present (the "Audit");

WHEREAS, according to the sworn declaration of Plaintiffs' counsel Defendants were notified of entry of the Default Judgment by certified mail, return receipt requested, on March 15, 2005, April 24, 2008, and April 25, 2008, and Defendants Joseph Gheraldi personally signed

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04cv9509 (HB)
CONTEMPT ORDER

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the U.S. Postal Service Return Receipts in acknowledgement of receipt of such notice (see Dec. of Michael J. Vollbrecht, dated March 10, 2009 ("Vollbrecht Decl.") ¶17);

WHEREAS, Defendants have refused to comply with the Default Judgment's instruction to permit and cooperate in the Audit despite Plaintiffs' demand for the same (see Vollbrecht Decl. ¶19);

WHEREAS, on March 11, 2009 Plaintiffs filed an Order to Show Cause why Defendants should not be held in contempt of Court (the "OSC"), and the Court set a hearing date of March 25, 2009;

WHEREAS, Defendants neither opposed the OSC nor appeared at the scheduled hearing;

WHEREAS, Defendants' non-compliance with the Default Judgment and the OSC is clear and unambiguous and supported by clear and convincing evidence that lacks any suggestion Defendants have diligently attempted to reasonably comply with this Court's prior Orders, see *Paramedics Electromedicina Comercial, Ltda v. GE Medical Systems Information Technologies, Inc.* 369 F.3d 645, 655 (2d Cir. 2004); and

WHEREAS, the Court may impose civil contempt sanctions to secure future compliance with its Orders, see *Id.* (citing *Manhattan Indus., Inc. v. Sweater Bee by Banff, Ltd.*, 885 F.2d 1, 5 (2d Cir. 1989)); it is hereby

ORDERED that Defendants Straight Line Construction Consultants Inc. and Joseph Gheraldi are in CONTEMPT OF COURT until such time as they comply fully with the terms of the Default Judgment; and it is further

ORDERED that Defendants shall immediately comply with the terms of the Default Judgment, including without limitation by permitting and cooperating with the Audit; and it is further

ORDERED that to secure Defendants' compliance with this Order, a fine of \$^{250.00} per Day will be imposed on the Defendants, collectively, for each Day after the date of this Order that they remain in violation hereof.

SO ORDERED
~~March~~, 2009
April 10, 09

Daniel Bann
U.S.D.J.